

GABBS EXPLORATION COMPANY
UNITED STATES SMELTING REFINING & MINING COMPANY

IBLA 70-301

Decided September 25, 1972

Appeal from separate decisions by the Colorado land office, Bureau of Land Management, rejecting a verified statement filed under the Multiple Mineral Development Act involving contest Colorado 167, and mineral patent application C-016557 in conflict with oil and gas leases C-011904 and 05101A.

Affirmed in part; modified and remanded in part.

Mining Claims: Contests -- Mining Claims: Determination of Validity

A determination of invalidity of interests in mining claims is effective where made as the result of contest proceedings wherein all the parties in interest were properly served and no appeal was taken.

Multiple Mineral Development Act: Generally

Proceedings under the Multiple Mineral Development Act, 30 U.S.C. § 521 et seq. (1970), will be suspended until final decisions are rendered in proposed Government contest proceedings against the same mining claims.

Multiple Mineral Development Act: Hearings -- Multiple Mineral Development Act: Verified Statement

No hearing pursuant to the Multiple Mineral Development Act will be held with respect to rights asserted by a verified statement in a proceeding under that Act to the extent such rights are defined by a stipulation incidental to and pursuant to section 7(c) of the Act; however, such stipulation does not preclude the Department of the Interior from initiating a contest proceeding to determine the existence of a mining claimant's rights. A verified statement is properly rejected and a stipulation properly dismissed insofar as the statement or stipulation covers mining claims which are null and void.

APPEARANCES: Fred H. Evans, Esq., Dawson, Nagel, Sherman & Howard; Raymond B. Holbrook, Esq.

OPINION BY MR. RITVO

Gabbs Exploration Company applied for a mineral patent to the Mullins Nos. 13 to 20 oil shale placer mining claims. The application was later amended for reasons not pertinent to this decision. In the meantime U.S. Smelting Refining and Mining Company, a holder of federal oil and gas leases embracing the lands in these mining claims and others, initiated proceedings to determine its rights to Leasing Act minerals under the Multiple Mineral Development Act, 30 U.S.C. § 521 et seq. (1970) (hereafter referred to as P.L. 585). The P.L. 585 proceedings covered all or part of the Mullins Nos. 13-20 and other oil shale placer claims now held by Gabbs, Coral Nos. 1-6 and Sibbald Nos. 11 and 12. During the pendency of this matter a stipulation covering all or portions of the mining claims was entered into pursuant to section 7(c), 30 U.S.C. 527(c). By separate decisions dated September 24, 1963, the Colorado land office rejected the patent applications and verified statements as to those claims previously declared void in earlier contest proceedings Nos. 11988 and 12111. Contest No. 11988 covered the Mullins Nos. 13-20 and other claims; Contest No. 12111 covered the Coral Nos. 1-6 and the Sibbald Nos. 11 and 12.

The questions presented on appeal were fully considered in United States Smelting Refining & Mining Company, Tell Ertl, et al., 6 IBLA 253 (June 28, 1972). We made clear that when mining claims had been invalidated in former contest proceedings, the decision would not be disturbed as to those parties properly joined therein. We held that rights asserted by a verified statement in a proceeding under P.L. 585 will be unaffected by a notice published under that Act to the extent such rights are defined by a stipulation entered into pursuant to section 7(c) thereof. We also pointed out that P.L. 585 proceedings will be suspended until final decisions are rendered in proposed government contest proceedings against the same mining claims. The tenets and holdings of that decision are applicable here.

The Department previously considered a case involving one of the contests relied on by the land office, Gabbs Exploration Company, 67 I.D. 160 (1960). This was reviewed in Gabbs v. Udall, Civil No. 219-61 USDC; judgment was rendered in favor of the defendant on December 1, 1961, and affirmed in 315 F.2d 37 (D.C. Cir. 1963), cert. den., 375 U.S. 822 (1963). The Court held that the record owners of the claims listed in Contest No. 12111 had been properly served, and that the declaration of invalidity as to those claims is effective and will not be reopened. Contest No. 12111

covered more claims than were involved in the lawsuit. Nevertheless, the Court's holding as to the efficacy of the contest is envisaged as blanketing all the mining claims covered in that contest, all of them being in similar posture. It follows that the Sibbald Nos. 1-12 and the Coral Nos. 1-8 are null and void. No further action is necessary as to any of these mining claims which are here reiterated as invalid.

Contest No. 11988 covered the Mullins mining claims numbers 21-24 as well as the numbers 13-20 involved in this proceeding. As to all the Mullins claims, notices of contest were duly issued and copies sent by registered mail to C. B. Cramer, Mrs. H. S. Cramer, Mrs. I. M. White, F. C. Cramer, Mrs. L. Cramer, J. Lesser, Mrs. S. Lesser, and Mrs. I. Townsend. Mrs. G. Cramer, C. B. Cramer, J. Lesser and Mrs. I. Townsend were personally served. Although Mrs. I. M. White did not receive a copy of the original notice, a copy of the amended notice was duly served and personally receipted by her. Having failed to answer, the charges were properly taken as confessed by the five parties who were so served and their rights were extinguished.

The registered notice was accepted by one W. H. Ewing in behalf of F. C. and Mrs. L. Cramer; J. H. Lesser accepted service in behalf of his wife, Mrs. S. Lesser. Absent proof of authorization to Ewing and Lesser to accept service in behalf of others (and the record does not disclose any such authorization) the rights of the three parties were not extinguished. The decisions below are modified to this extent. The patent application and the P.L. 585 proceeding will be suspended pending the final determination of the subsisting rights, if any, of F. C. Cramer, Mrs. L. Cramer and Mrs. S. Lesser in the contest proceedings which will be initiated in consequence of the secretarial direction of April 7, 1964, as more fully explained in our decision of June 28, 1972.

Therefore, pursuant to the authority delegated to the Board of Land Appeals, 211 DM 13.5; 35 F.R. 12081, the decisions appealed from are affirmed in part, and modified in part. The records are remanded to the Colorado State Director, Bureau of Land Management for appropriate processing within the mandate of this decision.

Martin Ritvo
Member

We concur:

Douglas E. Henriques
Member

Joan B. Thompson
Member

